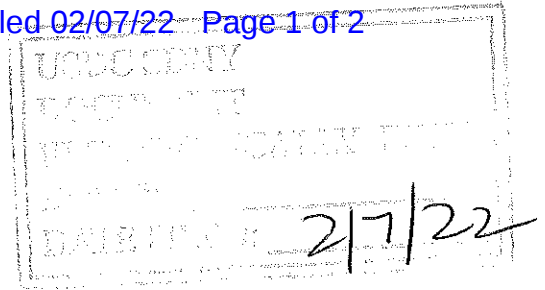


Copies mailed
Chambers of Judge Davison
2/7/22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ALAN CHARLES,

Petitioner,

- against -

MICHAEL CAPRA,
Superintendent, Sing Sing Correctional Facility

Respondent.

21 Civ. 1669 (VB)(PED)

ORDER DENYING STAY

PAUL E. DAVISON, U.S.M.J.:

By motion dated December 10, 2021, Petitioner seeks a stay of this *habeas corpus* action so that he can pursue and exhaust *coram nobis* remedies in state court. [Dkts. 18-19.] Respondent opposes. [Dkt. 23.] For the reasons set forth below, the motion is **DENIED**.

This Court today issues a Report and Recommendation to the Honorable Vincent Briccetti, recommending that this action be dismissed as time-barred. Familiarity with that Report and Recommendation, and the procedural history set forth therein, is assumed. In the event that Judge Briccetti adopts this Court's recommendation, Petitioner's motion for a stay is moot.

In any event, Petitioner's application for a stay is without merit. Although Petitioner cites Rule 15(a), Fed. R. Civ. P., in support of his motion, the Court construes Petitioner's motion as an application for stay-and-abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005).

Although *Rhines* authorizes district courts to stay *habeas* actions pending exhaustion of state remedies in appropriate circumstances, I agree with Respondent that Petitioner has failed to show that the prerequisites for stay-and-abeyance are satisfied here. In particular, Petitioner has not explained why he did not include the claim(s) he now wishes to exhaust in his 2015 *coram nobis*

petition, nor has he accounted for his delay in pursuing any additional state remedies since his last state court post-conviction litigation terminated in 2017. The passage of time here is extraordinary. On this record, Petitioner has failed to show good cause for his failure to exhaust any additional claims at some earlier stage of the proceedings.

Accordingly, Petitioner motion is **DENIED**. The Clerk shall close Dkt. 18.

Dated: February 7, 2022
White Plains, New York



PAUL L. DAVISON, U.S.M.J.

A copy of this Order has been mailed to:

Alan Charles
DIN #11A4701
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562-5442